IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7787 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHOJABHAI RUDABHAI GALCHAR

Versus

MANGROL MUNICIPALITY

Appearance:

1. Special Civil Application No. 7787 of 1999

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

Ms. Krina Thakkar for MR YOGESH S LAKHANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 04/11/2003

ORAL JUDGEMENT

Heard MR MEHUL S SHAH for Petitioner;Ms. Krina Thakkar for MR YOGESH S LAKHANI for Respondent Mangrol Municipality.

In this petition, the petitioner has raised grievance to the effect that inspite of various efforts made by the petitioner before the respondent for benefit of pension as well as revised pension from the respondent, the respondent has not made payment of his legitimate dues to the petitioner which were legitimately due to the petitioner on 31.12.1997, though, according to the petitioner, resolutions to that effect were already passed by the respondent on 31.3.1998 and even the office orders were also passed on 8.5.1998 and yet the petitioner has remained without payment of such legitimate dues. This Court has, while issuing rule in this petition, passed the following order on 15.3.2000:

"Mr. S.M. Shah for petitioner, Mr. Jagdish Mehga for Mr. Y.S. Lakhani for Mangrol Municipality.

Rule. During pendency of this petition, the Municipality shall pay a sum of Rs.10,000.00 (Rupees ten thousand only) per month on account of the dues of the retirement benefits. The above amount shall be paid on or before 10th of every calendar month commencing from May, 2000. Looking to the facts and circumstances of the case, the respondent Municipality is directed in the above terms."

Learned advocate Mr. Mehul Shah appearing for the petitioner has submitted that the respondent Municipality has strictly complied with the interim directions issued by this court while admitting the petition by order dated 15.3.2000 and all the legitimate dues of the petitioner namely pension, gratuity, leave encashment etc. have been paid by the respondent municipality to the petitioner pursuant to this court's interim directions dated 15.3.2000. He also submitted that the amounts which were legitimately due to the petitioner on 31.12.1997 were not paid by the respondent municipality for a period of about five years and the same has been paid by the respondent municipality only after the interim directions issued by this court on 15.3.2000. In view of that, he made two requests before this Court. The first request made by him is to the effect that since the amounts which were legitimately due to the petitioner on 31.12.1997 were belatedly paid by the respondent Municipality only because of the interim orders made by this court on 15.3.2000, the respondent

municipality may be directed to pay interest for the period for which such payments were delayed. The second request made by him is for awarding some reasonable costs considering the facts and circumstances of the case.

The respondent Municipality has filed affidavit in reply and has produced necessary calculations and the necessary payments have been made by it to the petitioner. The reason advanced by the municipality for not making immediate and prompt payment of the legitimate dues of the petitioner is the poor financial position of the respondent municipality due to which it has not been able to make such payments immediately to the petitioner. It was submitted by Ms. Krina Thakkar on behalf of the respondent Municipality that as such, there was no intention on the part of the municipality to delay such payments to the petitioner and the necessary resolutions and orders to that effect were also passed by the municipality in the year 1998 itself but because of the financial crisis faced by the municipality, it could not be paid to the petitioner thereafter and considering such bona fides on the part of the respondent Municipality, no interest may be awarded to the petitioner. She has also submitted that since everything has been paid by the respondent municipality to the petitioner in strict compliance of this court's interim directions dated 15.3.2000, no costs should be awarded to the petitioner considering the facts and circumstances of the case.

I have considered the submissions made by the learned advocates for the parties. I have also considered the averments made by the petitioner in the memo of petition as well as the respondents in their affidavit in reply. The reasons advanced by the municipality for not immediately making the payments of the legitimate dues of the petitioner is the poor financial position of the respondent municipality. Considering the averments made by the deponent in the affidavit in reply filed on behalf of the municipality, and also considering the fact that at the relevant time, immediately, necessary orders and the resolutions were passed by the Municipality in favour of the petitioner for granting legitimate dues of pension, leave encashment etc. As such, this would mean that the intentions of the respondent Mangarol Municipality were very much clear to give the benefits due to the petitioner immediately but thereafter, for the reason advanced by the Municipality namely because of the poor financial position of the municipality, it has not been able to make payments as per its own orders and reasons. Therefore, keeping this aspect of the matter in view, according to my opinion,

request for award of interest cannot be accepted. Same is, therefore, rejected. However, considering the delay on the part of the respondent municipality in making payments which were legitimately due to the petitioner, according to my opinion, considering the facts and circumstances of the case, the petitioner is entitled to some reasonable costs. In the facts and circumstances of the case, according to my opinion, cost is required to be quantified at Rs.5,000.00. Hence the respondent municipality is directed to make payment of the cost of Rs.5000.00 (Rupees five thousand only) to the petitioner within two months from the date of receipt of simple copy of this order.

With these observations and directions, this petition is disposed of. Rule is discharged. Interim orders shall stand vacated. There shall be no order as to costs.

Dt.4.11.2003. (H.K. Rathod,J.)

Vyas